

AMENDED IN ASSEMBLY MARCH 8, 2006

AMENDED IN SENATE MAY 25, 2005

AMENDED IN SENATE APRIL 27, 2005

AMENDED IN SENATE APRIL 12, 2005

SENATE BILL

No. 864

Introduced by Senator Poochigian

(Principal coauthors: Assembly Members La Suer and Spitzer)

(Coauthors: Senators Battin, Dutton, Maldonado, and Runner)

(Coauthors: Assembly Members Aghazarian, Bogh, Cogdill, Daucher, DeVore, Emmerson, Garcia, Harman, Houston, Jerome Horton, Huff, La Malfa, Leslie, Maze, McCarthy, Niello, Plescia, Sharon Runner, Strickland, Tran, Villines, and Wyland)

February 22, 2005

An act to amend Sections 290.46 and 3000 of the Penal Code, and to amend Sections 6600, 6601, 6603, 6604, 6604.1, 6605, and 6608 of the Welfare and Institutions Code, relating to mental health.

LEGISLATIVE COUNSEL'S DIGEST

SB 864, as amended, Poochigian. Sexually violent predators: term of commitment.

Existing law requires the Director of Corrections, prior to the release of a person from custody resulting from conviction for certain crimes of a sexual nature against 2 or more victims, to refer the person to the State Department of Mental Health for evaluation.

This bill would expand the list of crimes of a sexual nature for this purpose.

Existing law authorizes civil commitment, as a sexually violent predator, to the custody of the State Department of Mental Health for

a 2-year term for treatment of the person's diagnosed mental disorder if the person is adjudicated to be likely to engage in sexually violent criminal behavior if discharged.

This bill would, instead, authorize the commitment for ~~a 4-year~~ *an indeterminate* term, and would make conforming changes. This bill would require that courts give a preference in scheduling commitment trials under these provisions over all other civil matters. The bill would declare the intent of the Legislature to work with the departments to explore prerelease treatment programs and would require the State Department of Mental Health to share the analysis with the Senate Budget and Fiscal Review Committee and others.

Existing law provides that the commitment shall not toll or otherwise affect the parole of a person subject to parole.

This bill would, instead, make satisfactory completion of the commitment process a condition of parole for inmates subject to that process, would toll the term of parole during the time in which a committed person is detained in a secure facility, and would make conforming changes.

Existing law requires the Department of Justice to make specified information about certain sex offenders classified by the offense he or she committed, available to the public via an Internet Web site, including, but not limited to, criminal history.

This bill would include status as a sexually violent predator within the criminal history information.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. It is the intent of the Legislature to work with
2 the State Department of Corrections and with the State
3 Department of Mental Health to explore treatment programs for
4 sex offenders to be administered, where feasible, during
5 incarceration and prior to release. The State Department of
6 Mental Health shall share the results of its analysis conducted
7 pursuant to this section with the Senate Budget and Fiscal
8 Review Committee and other interested parties. Nothing in this
9 section shall be construed to provide additional rights to
10 offenders.

1 *SEC. 1.1. Section 290.46 of the Penal Code is amended to*
2 *read:*

3 290.46. (a) On or before the dates specified in this section,
4 the Department of Justice shall make available information
5 concerning persons who are required to register pursuant to
6 Section 290 to the public via an Internet Web site as specified in
7 this section. The department shall update the Internet Web site on
8 an ongoing basis. All information identifying the victim by name,
9 birth date, address, or relationship to the registrant shall be
10 excluded from the Internet Web site. The name or address of the
11 person's employer and the listed person's criminal history other
12 than the specific crimes for which the person is required to
13 register shall not be included on the Internet Web site. The
14 Internet Web site shall be translated into languages other than
15 English as determined by the department.

16 (b) (1) On or before July 1, 2005, with respect to a person
17 who has been convicted of the commission or the attempted
18 commission of any of the offenses listed in, or who is described
19 in, paragraph (2), the Department of Justice shall make available
20 to the public via the Internet Web site his or her name and known
21 aliases, a photograph, a physical description, including gender
22 and race, date of birth, criminal history, *including, but not limited*
23 *to, sexually violent predator status*, the address at which the
24 person resides, and any other information that the Department of
25 Justice deems relevant, but not the information excluded pursuant
26 to subdivision (a).

27 (2) This subdivision shall apply to the following offenses and
28 offenders:

29 (A) Section 207 committed with intent to violate Section 261,
30 286, 288, 288a, or 289.

31 (B) Section 209 committed with intent to violate Section 261,
32 286, 288, 288a, or 289.

33 (C) Paragraph (2) or (6) of subdivision (a) of Section 261.

34 (D) Section 264.1.

35 (E) Section 269.

36 (F) Subdivision (c) or (d) of Section 286.

37 (G) Subdivision (a), (b), or (c) of Section 288, provided that
38 the offense is a felony.

39 (H) Subdivision (c) or (d) of Section 288a.

40 (I) Section 288.5.

1 (J) Subdivision (a) or (j) of Section 289.

2 (K) Any person who has ever been adjudicated a sexually
3 violent predator as defined in Section 6600 of the Welfare and
4 Institutions Code.

5 (c) (1) On or before July 1, 2005, with respect to a person
6 who has been convicted of the commission or the attempted
7 commission of any of the offenses listed in paragraph (2), the
8 Department of Justice shall make available to the public via the
9 Internet Web site his or her name and known aliases, a
10 photograph, a physical description, including gender and race,
11 date of birth, criminal history, the community of residence and
12 ZIP Code in which the person resides or the county in which the
13 person is registered as a transient, and any other information that
14 the Department of Justice deems relevant, but not the information
15 excluded pursuant to subdivision (a). On or before July 1, 2006,
16 the Department of Justice shall determine whether any person
17 convicted of an offense listed in paragraph (2) also has one or
18 more prior or subsequent convictions of an offense listed in
19 paragraph (2) of subdivision (a) of Section 290, and, for those
20 persons, the Department of Justice shall make available to the
21 public via the Internet Web site the address at which the person
22 resides. However, the address at which the person resides shall
23 not be disclosed until a determination is made that the person is,
24 by virtue of his or her additional prior or subsequent conviction
25 of an offense listed in paragraph (2) of subdivision (a) of Section
26 290, subject to this subdivision.

27 (2) This subdivision shall apply to the following offenses:

28 (A) Section 220, except assault to commit mayhem.

29 (B) Paragraph (1), (3), or (4) of subdivision (a) of Section 261.

30 (C) Paragraph (2) of subdivision (b), or subdivision (f), (g), or
31 (i), of Section 286.

32 (D) Paragraph (2) of subdivision (b), or subdivision (f), (g), or
33 (i), of Section 288a.

34 (E) Subdivision (b), (d), (e), or (i) of Section 289.

35 (d) (1) On or before July 1, 2005, with respect to a person
36 who has been convicted of the commission or the attempted
37 commission of any of the offenses listed in, or who is described
38 in, this subdivision, the Department of Justice shall make
39 available to the public via the Internet Web site his or her name
40 and known aliases, a photograph, a physical description,

1 including gender and race, date of birth, criminal history, the
2 community of residence and ZIP Code in which the person
3 resides or the county in which the person is registered as a
4 transient, and any other information that the Department of
5 Justice deems relevant, but not the information excluded pursuant
6 to subdivision (a) or the address at which the person resides.

7 (2) This subdivision shall apply to the following offenses and
8 offenders:

9 (A) Subdivision (a) of Section 243.4, provided that the offense
10 is a felony.

11 (B) Section 266, provided that the offense is a felony.

12 (C) Section 266c, provided that the offense is a felony.

13 (D) Section 266j.

14 (E) Section 267.

15 (F) Subdivision (c) of Section 288, provided that the offense is
16 a misdemeanor.

17 (G) Section 647.6.

18 (H) Any person required to register pursuant to Section 290
19 based upon an out-of-state conviction, unless that person is
20 excluded from the Internet Web site pursuant to subdivision (e).
21 However, if the Department of Justice has determined that the
22 out-of-state crime, if committed or attempted in this state, would
23 have been punishable in this state as a crime described in
24 subparagraph (A) of paragraph (2) of subdivision (a) of Section
25 290, the person shall be placed on the Internet Web site as
26 provided in subdivision (b) or (c), as applicable to the crime.

27 (e) (1) If a person has been convicted of the commission or
28 the attempted commission of any of the offenses listed in this
29 subdivision, and he or she has been convicted of no other offense
30 listed in subdivision (b), (c), or (d) other than those listed in this
31 subdivision, that person may file an application with the
32 Department of Justice, on a form approved by the department, for
33 exclusion from the Internet Web site. If the department
34 determines that the person meets the requirements of this
35 subdivision, the department shall grant the exclusion and no
36 information concerning the person shall be made available via
37 the Internet Web site described in this section. He or she bears
38 the burden of proving the facts that make him or her eligible for
39 exclusion from the Internet Web site. However, a person who has
40 filed for or been granted an exclusion from the Internet Web site

1 is not relieved of his or her duty to register as a sex offender
2 pursuant to Section 290 nor from any otherwise applicable
3 provision of law.

4 (2) This subdivision shall apply to the following offenses:

5 (A) A felony violation of subdivision (a) of Section 243.4.

6 (B) Section 647.6, provided the offense is a misdemeanor.

7 (C) (i) An offense for which the offender successfully
8 completed probation, provided that the offender submits to the
9 department a certified copy of a probation report, presentencing
10 report, report prepared pursuant to Section 288.1, or other official
11 court document that clearly demonstrates both of the following:

12 (I) The offender was the victim's parent, stepparent, sibling, or
13 grandparent.

14 (II) The crime did not involve either oral copulation or
15 penetration of the vagina or rectum of either the victim or the
16 offender by the penis of the other or by any foreign object.

17 (ii) An offense for which the offender is on probation at the
18 time of his or her application, provided that the offender submits
19 to the department a certified copy of a probation report,
20 presentencing report, report prepared pursuant to Section 288.1,
21 or other official court document that clearly demonstrates both of
22 the following:

23 (I) The offender was the victim's parent, stepparent, sibling, or
24 grandparent.

25 (II) The crime did not involve either oral copulation or
26 penetration of the vagina or rectum of either the victim or the
27 offender by the penis of the other or by any foreign object.

28 (iii) If, subsequent to his or her application, the offender
29 commits a violation of probation resulting in his or her
30 incarceration in county jail or state prison, his or her exclusion,
31 or application for exclusion, from the Internet Web site shall be
32 terminated.

33 (iv) For the purposes of this subparagraph, "successfully
34 completed probation" means that during the period of probation
35 the offender neither received additional county jail or state prison
36 time for a violation of probation nor was convicted of another
37 offense resulting in a sentence to county jail or state prison.

38 (f) The Department of Justice shall make a reasonable effort to
39 provide notification to persons who have been convicted of the
40 commission or attempted commission of an offense specified in

1 subdivision (b), (c), or (d), that on or before July 1, 2005, the
2 department is required to make information about specified sex
3 offenders available to the public via an Internet Web site as
4 specified in this section. The Department of Justice shall also
5 make a reasonable effort to provide notice that some offenders
6 are eligible to apply for exclusion from the Internet Web site.

7 (g) (1) A designated law enforcement entity, as defined in
8 subdivision (f) of Section 290.45, may make available
9 information concerning persons who are required to register
10 pursuant to Section 290 to the public via an Internet Web site as
11 specified in paragraph (2).

12 (2) The law enforcement entity may make available by way of
13 an Internet Web site the information described in subdivision (c)
14 if it determines that the public disclosure of the information
15 about a specific offender by way of the entity's Internet Web site
16 is necessary to ensure the public safety based upon information
17 available to the entity concerning that specific offender.

18 (3) The information that may be provided pursuant to this
19 subdivision may include the information specified in subdivision
20 (b) of Section 290.45. However, that offender's address may not
21 be disclosed unless he or she is a person whose address is on the
22 Department of Justice's Internet Web site pursuant to subdivision
23 (b) or (c).

24 (h) For purposes of this section, "offense" includes the
25 statutory predecessors of that offense, or any offense committed
26 in another jurisdiction that, if committed or attempted to be
27 committed in this state, would have been punishable in this state
28 as an offense listed in subparagraph (A) of paragraph (2) of
29 subdivision (a) of Section 290.

30 (i) Notwithstanding Section 6254.5 of the Government Code,
31 disclosure of information pursuant to this section is not a waiver
32 of exemptions under Chapter 3.5 (commencing with Section
33 6250) of Title 1 of Division 7 of the Government Code and does
34 not affect other statutory restrictions on disclosure in other
35 situations.

36 (j) (1) Any person who uses information disclosed pursuant to
37 this section to commit a misdemeanor shall be subject to, in
38 addition to any other penalty or fine imposed, a fine of not less
39 than ten thousand dollars (\$10,000) and not more than fifty
40 thousand dollars (\$50,000).

1 (2) Any person who uses information disclosed pursuant to
2 this section to commit a felony shall be punished, in addition and
3 consecutive to any other punishment, by a five-year term of
4 imprisonment in the state prison.

5 (k) Any person who is required to register pursuant to Section
6 290 who enters an Internet Web site established pursuant to this
7 section shall be punished by a fine not exceeding one thousand
8 dollars (\$1,000), imprisonment in a county jail for a period not to
9 exceed six months, or by both that fine and imprisonment.

10 (l) (1) A person is authorized to use information disclosed
11 pursuant to this section only to protect a person at risk.

12 (2) Except as authorized under paragraph (1) or any other
13 provision of law, use of any information that is disclosed
14 pursuant to this section for purposes relating to any of the
15 following is prohibited:

16 (A) Health insurance.

17 (B) Insurance.

18 (C) Loans.

19 (D) Credit.

20 (E) Employment.

21 (F) Education, scholarships, or fellowships.

22 (G) Housing or accommodations.

23 (H) Benefits, privileges, or services provided by any business
24 establishment.

25 (3) This section shall not affect authorized access to, or use of,
26 information pursuant to, among other provisions, Sections 11105
27 and 11105.3, Section 8808 of the Family Code, Sections 777.5
28 and 14409.2 of the Financial Code, Sections 1522.01 and
29 1596.871 of the Health and Safety Code, and Section 432.7 of
30 the Labor Code.

31 (4) (A) Any use of information disclosed pursuant to this
32 section for purposes other than those provided by paragraph (1)
33 or in violation of paragraph (2) shall make the user liable for the
34 actual damages, and any amount that may be determined by a
35 jury or a court sitting without a jury, not exceeding three times
36 the amount of actual damage, and not less than two hundred fifty
37 dollars (\$250), and attorney's fees, exemplary damages, or a civil
38 penalty not exceeding twenty-five thousand dollars (\$25,000).

39 (B) Whenever there is reasonable cause to believe that any
40 person or group of persons is engaged in a pattern or practice of

1 misuse of the information available via an Internet Web site
2 established pursuant to this section in violation of paragraph (2),
3 the Attorney General, any district attorney, or city attorney, or
4 any person aggrieved by the misuse is authorized to bring a civil
5 action in the appropriate court requesting preventive relief,
6 including an application for a permanent or temporary injunction,
7 restraining order, or other order against the person or group of
8 persons responsible for the pattern or practice of misuse. The
9 foregoing remedies shall be independent of any other remedies or
10 procedures that may be available to an aggrieved party under
11 other provisions of law, including Part 2 (commencing with
12 Section 43) of Division 1 of the Civil Code.

13 (m) The public notification provisions of this section are
14 applicable to every person described in this section, without
15 regard to when his or her crimes were committed or his or her
16 duty to register pursuant to Section 290 arose, and to every
17 offense described in this section, regardless of when it was
18 committed.

19 (n) On or before July 1, 2006, and every year thereafter, the
20 Department of Justice shall make a report to the Legislature
21 concerning the operation of this section.

22 (o) A designated law enforcement entity and its employees
23 shall be immune from liability for good faith conduct under this
24 section.

25 *SEC. 1.2. Section 3000 of the Penal Code is amended to*
26 *read:*

27 3000. (a) (1) The Legislature finds and declares that the
28 period immediately following incarceration is critical to
29 successful reintegration of the offender into society and to
30 positive citizenship. It is in the interest of public safety for the
31 state to provide for the supervision of and surveillance of
32 parolees, including the judicious use of revocation actions, and to
33 provide educational, vocational, family and personal counseling
34 necessary to assist parolees in the transition between
35 imprisonment and discharge. A sentence pursuant to Section
36 1168 or 1170 shall include a period of parole, unless waived, as
37 provided in this section.

38 (2) The Legislature finds and declares that it is not the intent
39 of this section to diminish resources allocated to the Department
40 of Corrections for parole functions for which the department is

1 responsible. It is also not the intent of this section to diminish the
2 resources allocated to the Board of Prison Terms to execute its
3 duties with respect to parole functions for which the board is
4 responsible.

5 (3) The Legislature finds and declares that diligent effort must
6 be made to ensure that parolees are held accountable for their
7 criminal behavior, including, but not limited to, the satisfaction
8 of restitution fines and orders.

9 (4) Any finding made pursuant to Article 4 (commencing
10 with Section 6600) of Chapter 2 of Part 2 of Division 6 of the
11 Welfare and Institutions Code, that a person is a sexually violent
12 predator shall *toll, but not toll, otherwise discharge, or otherwise*
13 *affect that person's period of parole. Notwithstanding any*
14 *provision of law to the contrary, for an inmate subject to*
15 *commitment proceedings as a sexually violent predator, a*
16 *condition of parole shall be the satisfactory completion of that*
17 *process. The period of parole shall be tolled during the portion*
18 *of that commitment in which the person is detained in a secure*
19 *facility. Upon release from commitment, the person shall be*
20 *returned to complete any remainder of the term of parole.*

21 (b) Notwithstanding any provision to the contrary in Article 3
22 (commencing with Section 3040) of this chapter, the following
23 shall apply:

24 (1) At the expiration of a term of imprisonment of one year
25 and one day, or a term of imprisonment imposed pursuant to
26 Section 1170 or at the expiration of a term reduced pursuant to
27 Section 2931 or 2933, if applicable, the inmate shall be released
28 on parole for a period not exceeding three years, except that any
29 inmate sentenced for an offense specified in paragraph (3), (4),
30 (5), (6), (11), (16), or (18) of subdivision (c) of Section 667.5
31 shall be released on parole for a period not exceeding five years,
32 unless in either case the parole authority for good cause waives
33 parole and discharges the inmate from the custody of the
34 department.

35 (2) In the case of any inmate sentenced under Section 1168,
36 the period of parole shall not exceed five years in the case of an
37 inmate imprisoned for any offense other than first or second
38 degree murder for which the inmate has received a life sentence,
39 and shall not exceed three years in the case of any other inmate,
40 unless in either case the parole authority for good cause waives

1 parole and discharges the inmate from custody of the department.
2 This subdivision shall also be applicable to inmates who
3 committed crimes prior to July 1, 1977, to the extent specified in
4 Section 1170.2.

5 (3) Notwithstanding paragraphs (1) and (2), in the case of any
6 offense for which the inmate has received a life sentence
7 pursuant to Section 667.61 or 667.71, the period of parole shall
8 be five years. Upon the request of the Department of Corrections,
9 and on the grounds that the paroled inmate may pose a
10 substantial danger to public safety, the Board of Prison Terms
11 shall conduct a hearing to determine if the parolee shall be
12 subject to a single additional five-year period of parole. The
13 board shall conduct the hearing pursuant to the procedures and
14 standards governing parole revocation. The request for parole
15 extension shall be made no less than 180 days prior to the
16 expiration of the initial five-year period of parole.

17 (4) The parole authority shall consider the request of any
18 inmate regarding the length of his or her parole and the
19 conditions thereof.

20 (5) Upon successful completion of parole, or at the end of the
21 maximum statutory period of parole specified for the inmate
22 under paragraph (1), (2), or (3), as the case may be, whichever is
23 earlier, the inmate shall be discharged from custody. The date of
24 the maximum statutory period of parole under this subdivision
25 and paragraphs (1), (2), and (3) shall be computed from the date
26 of initial parole or from the date of extension of parole pursuant
27 to paragraph (3) and shall be a period chronologically
28 determined. Time during which parole is suspended because the
29 prisoner has absconded or has been returned to custody as a
30 parole violator shall not be credited toward any period of parole
31 unless the prisoner is found not guilty of the parole violation.
32 However, in no case, except as provided in Section 3064, may a
33 prisoner subject to three years on parole be retained under parole
34 supervision or in custody for a period longer than four years from
35 the date of his or her initial parole, and, except as provided in
36 Section 3064, in no case may a prisoner subject to five years on
37 parole be retained under parole supervision or in custody for a
38 period longer than seven years from the date of his or her initial
39 parole or from the date of extension of parole pursuant to
40 paragraph (3).

(6) The Department of Corrections shall meet with each inmate at least 30 days prior to his or her good time release date and shall provide, under guidelines specified by the parole authority, the conditions of parole and the length of parole up to the maximum period of time provided by law. The inmate has the right to reconsideration of the length of parole and conditions thereof by the parole authority. The Department of Corrections or the Board of Prison Terms may impose as a condition of parole that a prisoner make payments on the prisoner's outstanding restitution fines or orders imposed pursuant to subdivision (a) or (c) of Section 13967 of the Government Code, as operative prior to September 28, 1994, or subdivision (b) or (f) of Section 1202.4.

(7) For purposes of this chapter, the Board of Prison Terms shall be considered the parole authority.

(8) The sole authority to issue warrants for the return to actual custody of any state prisoner released on parole rests with the Board of Prison Terms, except for any escaped state prisoner or any state prisoner released prior to his or her scheduled release date who should be returned to custody, and Section 3060 shall apply.

(9) It is the intent of the Legislature that efforts be made with respect to persons who are subject to subparagraph (C) of paragraph (1) of subdivision (a) of Section 290 who are on parole to engage them in treatment.

SEC. 1.3. Section 6600 of the Welfare and Institutions Code is amended to read:

6600. As used in this article, the following terms have the following meanings:

(a) (1) "Sexually violent predator" means a person who has been convicted of a sexually violent offense against ~~two~~ *one* or more victims and who has a diagnosed mental disorder that makes the person a danger to the health and safety of others in that it is likely that he or she will engage in sexually violent criminal behavior.

(2) For purposes of this subdivision any of the following shall be considered a conviction for a sexually violent offense:

(A) A prior or current conviction that resulted in a determinate prison sentence for an offense described in subdivision (b).

1 (B) A conviction for an offense described in subdivision (b)
2 that was committed prior to July 1, 1977, and that resulted in an
3 indeterminate prison sentence.

4 (C) A prior conviction in another jurisdiction for an offense
5 that includes all of the elements of an offense described in
6 subdivision (b).

7 (D) A conviction for an offense under a predecessor statute
8 that includes all of the elements of an offense described in
9 subdivision (b).

10 (E) A prior conviction for which the inmate received a grant of
11 probation for an offense described in subdivision (b).

12 (F) A prior finding of not guilty by reason of insanity for an
13 offense described in subdivision (b).

14 (G) A conviction resulting in a finding that the person was a
15 mentally disordered sex offender.

16 (3) Conviction of one or more of the crimes enumerated in this
17 section shall constitute evidence that may support a court or jury
18 determination that a person is a sexually violent predator, but
19 shall not be the sole basis for the determination. The existence of
20 any prior convictions may be shown with documentary evidence.
21 The details underlying the commission of an offense that led to a
22 prior conviction, including a predatory relationship with the
23 victim, may be shown by documentary evidence, including, but
24 not limited to, *reports by law enforcement agencies*, preliminary
25 hearing transcripts, trial transcripts, probation and sentencing
26 reports, and evaluations by the State Department of Mental
27 Health. Jurors shall be admonished that they may not find a
28 person a sexually violent predator based on prior offenses absent
29 relevant evidence of a currently diagnosed mental disorder that
30 makes the person a danger to the health and safety of others in
31 that it is likely that he or she will engage in sexually violent
32 criminal behavior.

33 ~~(4) The provisions of this~~ This section shall apply to any
34 person against whom proceedings were initiated for commitment
35 as a sexually violent predator on or after January 1, 1996.

36 (b) “Sexually violent offense” means the following acts when
37 committed by force, violence, duress, menace, or fear of
38 immediate and unlawful bodily injury on the victim or another
39 person, and that are committed on, before, or after the effective
40 date of this article and result in a conviction or a finding of not

1 guilty by reason of insanity, as ~~provided~~ *defined* in subdivision
2 (a): a felony violation of ~~paragraph (2) of subdivision (a) of~~
3 ~~Section 261, paragraph (1) of subdivision (a) of Section 262,~~
4 ~~Section 264.1, subdivision (a) or (b) of Section 269, 286, 288, or~~
5 ~~subdivision (a) of Section 288a, 288.5, or 289 of the Penal Code,~~
6 ~~or sodomy or oral copulation in violation of Section 286 or 288a~~
7 *a felony violation of Section 207, 209, or 220 of the Penal Code*
8 *committed with the intent to commit a violation of Section 261,*
9 *262, 264.1, 269, 288, 288a, or 289 of the Penal Code.*

10 (c) “Diagnosed mental disorder” includes a congenital or
11 acquired condition affecting the emotional or volitional capacity
12 that predisposes the person to the commission of criminal sexual
13 acts in a degree constituting the person a menace to the health
14 and safety of others.

15 (d) “Danger to the health and safety of others” does not
16 require proof of a recent overt act while the offender is in
17 custody.

18 (e) “Predatory” means an act is directed toward a stranger, a
19 person of casual acquaintance with whom no substantial
20 relationship exists, or an individual with whom a relationship has
21 been established or promoted for the primary purpose of
22 victimization.

23 (f) “Recent overt act” means any criminal act that manifests a
24 likelihood that the actor may engage in sexually violent predatory
25 criminal behavior.

26 (g) Notwithstanding any other provision of law and for
27 purposes of this section, ~~no more than one~~ *a* prior juvenile
28 adjudication of a sexually violent offense may constitute a prior
29 conviction for which the person received a determinate term if all
30 of the following applies:

31 (1) The juvenile was 16 years of age or older at the time he or
32 she committed the prior offense.

33 (2) The prior offense is a sexually violent offense as specified
34 in subdivision (b). ~~Notwithstanding Section 6600.1, only an~~
35 ~~offense described in subdivision (b) shall constitute a sexually~~
36 ~~violent offense for purposes of this subdivision.~~

37 (3) The juvenile was adjudged a ward of the juvenile court
38 within the meaning of Section 602 because of the person’s
39 commission of the offense giving rise to the juvenile court
40 adjudication.

1 (4) The juvenile was committed to the Department of the
2 Youth Authority for the sexually violent offense.

3 (h) A minor adjudged a ward of the court for commission of
4 an offense that is defined as a sexually violent offense shall be
5 entitled to specific treatment as a sexual offender. The failure of
6 a minor to receive that treatment shall not constitute a defense or
7 bar to a determination that any person is a sexually violent
8 predator within the meaning of this article.

9 *SEC. 1.4. Section 6601 of the Welfare and Institutions Code*
10 *is amended to read:*

11 6601. (a) (1) Whenever the Director of Corrections
12 determines that an individual who is in custody under the
13 jurisdiction of the Department of Corrections, and who is either
14 serving a determinate prison sentence or whose parole has been
15 revoked, may be a sexually violent predator, the director shall, at
16 least six months prior to that individual's scheduled date for
17 release from prison, refer the person for evaluation in accordance
18 with this section. However, if the inmate was received by the
19 department with less than nine months of his or her sentence to
20 serve, or if the inmate's release date is modified by judicial or
21 administrative action, the director may refer the person for
22 evaluation in accordance with this section at a date that is less
23 than six months prior to the inmate's scheduled release date.

24 (2) A petition may be filed under this section if the individual
25 was in custody pursuant to his or her determinate prison term,
26 parole revocation term, or a hold placed pursuant to Section
27 6601.3, at the time the petition is filed. A petition shall not be
28 dismissed on the basis of a later judicial or administrative
29 determination that the individual's custody was unlawful, if the
30 unlawful custody was the result of a good faith mistake of fact or
31 law. This paragraph shall apply to any petition filed on or after
32 January 1, 1996.

33 (b) The person shall be screened by the Department of
34 Corrections and the Board of Prison Terms based on whether the
35 person has committed a sexually violent predatory offense and on
36 a review of the person's social, criminal, and institutional history.
37 This screening shall be conducted in accordance with a structured
38 screening instrument developed and updated by the State
39 Department of Mental Health in consultation with the
40 Department of Corrections. If as a result of this screening it is

1 determined that the person is likely to be a sexually violent
2 predator, the Department of Corrections shall refer the person to
3 the State Department of Mental Health for a full evaluation of
4 whether the person meets the criteria in Section 6600.

5 (c) The State Department of Mental Health shall evaluate the
6 person in accordance with a standardized assessment protocol,
7 developed and updated by the State Department of Mental
8 Health, to determine whether the person is a sexually violent
9 predator as defined in this article. The standardized assessment
10 protocol shall require assessment of diagnosable mental
11 disorders, as well as various factors known to be associated with
12 the risk of reoffense among sex offenders. Risk factors to be
13 considered shall include criminal and psychosexual history, type,
14 degree, and duration of sexual deviance, and severity of mental
15 disorder.

16 (d) Pursuant to subdivision (c), the person shall be evaluated
17 by two practicing psychiatrists or psychologists, or one practicing
18 psychiatrist and one practicing psychologist, designated by the
19 Director of Mental Health. If both evaluators concur that the
20 person has a diagnosed mental disorder so that he or she is likely
21 to engage in acts of sexual violence without appropriate
22 treatment and custody, the Director of Mental Health shall
23 forward a request for a petition for commitment under Section
24 6602 to the county designated in subdivision (i). Copies of the
25 evaluation reports and any other supporting documents shall be
26 made available to the attorney designated by the county pursuant
27 to subdivision (i) who may file a petition for commitment.

28 (e) If one of the professionals performing the evaluation
29 pursuant to subdivision (d) does not concur that the person meets
30 the criteria specified in subdivision (d), but the other professional
31 concludes that the person meets those criteria, the Director of
32 Mental Health shall arrange for further examination of the person
33 by two independent professionals selected in accordance with
34 subdivision (g).

35 (f) If an examination by independent professionals pursuant to
36 subdivision (e) is conducted, a petition to request commitment
37 under this article shall only be filed if both independent
38 professionals who evaluate the person pursuant to subdivision (e)
39 concur that the person meets the criteria for commitment
40 specified in subdivision (d). The professionals selected to

1 evaluate the person pursuant to subdivision (g) shall inform the
2 person that the purpose of their examination is not treatment but
3 to determine if the person meets certain criteria to be
4 involuntarily committed pursuant to this article. It is not required
5 that the person appreciate or understand that information.

6 (g) Any independent professional who is designated by the
7 Director of Corrections or the Director of Mental Health for
8 purposes of this section shall not be a state government
9 employee, shall have at least five years of experience in the
10 diagnosis and treatment of mental disorders, and shall include
11 psychiatrists and licensed psychologists who have a doctoral
12 degree in psychology. The requirements set forth in this section
13 also shall apply to any professionals appointed by the court to
14 evaluate the person for purposes of any other proceedings under
15 this article.

16 (h) If the State Department of Mental Health determines that
17 the person is a sexually violent predator as defined in this article,
18 the Director of Mental Health shall forward a request for a
19 petition to be filed for commitment under this article to the
20 county designated in subdivision (i). Copies of the evaluation
21 reports and any other supporting documents shall be made
22 available to the attorney designated by the county pursuant to
23 subdivision (i) who may file a petition for commitment in the
24 superior court.

25 (i) If the county's designated counsel concurs with the
26 recommendation, a petition for commitment shall be filed in the
27 superior court of the county in which the person was convicted of
28 the offense for which he or she was committed to the jurisdiction
29 of the Department of Corrections. The petition shall be filed, and
30 the proceedings shall be handled, by either the district attorney or
31 the county counsel of that county. The county board of
32 supervisors shall designate either the district attorney or the
33 county counsel to assume responsibility for proceedings under
34 this article.

35 (j) The time limits set forth in this section shall not apply
36 during the first year that this article is operative.

37 (k) If the person is otherwise subject to parole, a finding or
38 placement made pursuant to this article shall not ~~not~~ discharge,
39 or otherwise affect the term of parole pursuant to Article 1
40 (commencing with Section 3000) of Chapter 8 of Title 1 of Part

1 3 of the Penal Code, *except that time spent in a secure facility*
2 *pursuant to a commitment order shall toll the period of probation*
3 *as set forth in paragraph (4) of subdivision (a) of Section 3000 of*
4 *the Penal Code.*

5 (l) Pursuant to subdivision (d), the attorney designated by the
6 county pursuant to subdivision (i) shall notify the State
7 Department of Mental Health of its decision regarding the filing
8 of a petition for commitment within 15 days of making that
9 decision.

10 SEC. 1.5. Section 6603 of the Welfare and Institutions Code
11 is amended to read:

12 6603. (a) A person subject to this article shall be entitled to a
13 trial by jury, to the assistance of counsel, to the right to retain
14 experts or professional persons to perform an examination on his
15 or her behalf, and to have access to all relevant medical and
16 psychological records and reports. In the case of a person who is
17 indigent, the court shall appoint counsel to assist him or her, and,
18 upon the person's request, assist the person in obtaining an expert
19 or professional person to perform an examination or participate
20 in the trial on the person's behalf.

21 (b) The attorney petitioning for commitment under this article
22 shall have the right to demand that the trial be before a jury.
23 Notwithstanding any provision of law, the court shall give trials
24 under this article preference over all other civil matters,
25 including, but not limited to, matters set forth in Section 36 of the
26 Code of Civil Procedure.

27 (c) (1) If the attorney petitioning for commitment under this
28 article determines that updated evaluations are necessary in order
29 to properly present the case for commitment, the attorney may
30 request the State Department of Mental Health to perform
31 updated evaluations. If one or more of the original evaluators is
32 no longer available to testify for the petitioner in court
33 proceedings, the attorney petitioning for commitment under this
34 article may request the State Department of Mental Health to
35 perform replacement evaluations. When a request is made for
36 updated or replacement evaluations, the State Department of
37 Mental Health shall perform the requested evaluations and
38 forward them to the petitioning attorney and to the counsel for
39 the person subject to this article. However, updated or
40 replacement evaluations shall not be performed except as

1 necessary to update one or more of the original evaluations or to
2 replace the evaluation of an evaluator who is no longer available
3 to testify for the petitioner in court proceedings. These updated or
4 replacement evaluations shall include review of available
5 medical and psychological records, including treatment records,
6 consultation with current treating clinicians, and interviews of the
7 person being evaluated, either voluntarily or by court order. If an
8 updated or replacement evaluation results in a split opinion as to
9 whether the person subject to this article meets the criteria for
10 commitment, the State Department of Mental Health shall
11 conduct two additional evaluations in accordance with
12 subdivision (f) of Section 6601.

13 (2) For purposes of this subdivision, “no longer available to
14 testify for the petitioner in court proceedings” means that the
15 evaluator is no longer authorized by the Director of Mental
16 Health to perform evaluations regarding sexually violent
17 predators as a result of any of the following:

18 (A) The evaluator has failed to adhere to the protocol of the
19 State Department of Mental Health.

20 (B) The evaluator’s license has been suspended or revoked.

21 (C) The evaluator is unavailable pursuant to Section 240 of the
22 Evidence Code.

23 (d) Nothing in this section shall prevent the defense from
24 presenting otherwise relevant and admissible evidence.

25 (e) If the person subject to this article or the petitioning
26 attorney does not demand a jury trial, the trial shall be before the
27 court without a jury.

28 (f) A unanimous verdict shall be required in any jury trial.

29 (g) The court shall notify the State Department of Mental
30 Health of the outcome of the trial by forwarding to the
31 department a copy of the minute order of the court within 72
32 hours of the decision.

33 SEC. 2. Section 6604 of the Welfare and Institutions Code is
34 amended to read:

35 6604. The court or jury shall determine whether, beyond a
36 reasonable doubt, the person is a sexually violent predator. If the
37 court or jury is not satisfied beyond a reasonable doubt that the
38 person is a sexually violent predator, the court shall direct that
39 the person be released at the conclusion of the term for which he
40 or she was initially sentenced, or that the person be

1 unconditionally released at the end of parole, whichever is
2 applicable. If the court or jury determines that the person is a
3 sexually violent predator, the person shall be committed for ~~four~~
4 ~~years an indeterminate term~~ to the custody of the State
5 Department of Mental Health for appropriate treatment and
6 confinement in a secure facility designated by the Director of
7 Mental Health; ~~and the person shall not be kept in actual custody~~
8 ~~longer than four years unless a subsequent extended commitment~~
9 ~~is obtained from the court incident to the filing of a petition for~~
10 ~~extended commitment under this article or unless the term of~~
11 ~~commitment changes pursuant to subdivision (e) of Section 6605.~~
12 ~~Time spent on conditional release shall not count toward the~~
13 ~~four-year term of commitment, unless the person is placed in a~~
14 ~~locked facility by the conditional release program, in which case~~
15 ~~the time in a locked facility shall count toward the four-year term~~
16 ~~of commitment. The facility shall be located on the grounds of an~~
17 ~~institution under the jurisdiction of the Department of~~
18 ~~Corrections.~~

19 SEC. 3. Section 6604.1 of the Welfare and Institutions Code
20 is amended to read:

21 6604.1. (a) ~~The four-year term of commitment provided for~~
22 ~~in Section 6604 shall commence on the date upon which the~~
23 ~~court issues the initial order of commitment pursuant to that~~
24 ~~section. The initial four-year term shall not be reduced by any~~
25 ~~time spent in a secure facility prior to the order of commitment.~~
26 ~~For any subsequent extended commitments, the term of~~
27 ~~commitment shall be for four years commencing from the date of~~
28 ~~the termination of the previous commitment. section.~~

29 (b) The person shall be evaluated by two practicing
30 psychologists or psychiatrists, or by one practicing psychologist
31 and one practicing psychiatrist, designated by the State
32 Department of Mental Health. ~~The provisions of subdivisions (e)~~
33 ~~to (i), inclusive, of Section 6601 shall apply to evaluations~~
34 ~~performed for purposes of extended commitments. The rights,~~

35 (c) ~~The rights~~ requirements, and procedures set forth in
36 Section 6603 shall apply to extended ~~commitment proceedings~~
37 ~~all proceedings under this article.~~

38 SEC. 4. Section 6605 of the Welfare and Institutions Code is
39 amended to read:

6605. (a) A person found to be a sexually violent predator and committed to the custody of the State Department of Mental Health shall have a current examination of his or her mental condition made at least once every year. *The annual report shall include consideration of whether the committed person currently meets the definition of a sexually violent predator and whether conditional release to a less restrictive alternative or an unconditional release is in the best interest of the person, and whether conditions can be imposed that would adequately protect the community. The State Department of Mental Health shall file this periodic report with the court that committed the person under this article. The report shall be in the form of a declaration and shall be prepared by a professionally qualified person. A copy of the report shall be served on the prosecuting agency involved in the initial commitment and upon the committed person.* The person may retain, or if he or she is indigent and so requests, the court may appoint, a qualified expert or professional person to examine him or her, and the expert or professional person shall have access to all records concerning the person.

~~(b) The director shall provide the committed person with an annual written notice of his or her right to petition the court for conditional release under Section 6608. The notice shall contain a waiver of rights. The director shall forward the notice and waiver form to the court with the annual report. If the person does not affirmatively waive his or her right to petition the court for conditional release, the court shall set a show cause hearing to determine whether facts exist that warrant a hearing on whether the person's condition has so changed that he or she would not be a danger to the health and safety of others if discharged. The committed person shall have the right to be present and to have an attorney represent him or her at the show cause hearing.~~

(b) (1) If the State Department of Mental Health determines that either of the following conditions exist, the director shall authorize the person to petition the court for conditional release to a less restrictive alternative or for unconditional discharge, as appropriate:

(A) That the person's condition has so changed that the person no longer meets the definition of a sexually violent predator.

1 (B) *That conditional release to a less restrictive alternative is*
2 *in the best interest of the person, and that conditions can be*
3 *imposed that adequately protect the community.*

4 (2) *The petition shall be filed with the court and served upon*
5 *the prosecuting agency responsible for the initial commitment.*
6 *The court, upon receipt of the petition for conditional release to*
7 *a less restrictive alternative or unconditional discharge, shall*
8 *order a show cause hearing at which the court can consider the*
9 *petition and any accompanying documentation provided by the*
10 *medical director, the prosecuting attorney, or the committed*
11 *person.*

12 (c) If the court at the show cause hearing determines that
13 probable cause exists to believe that the committed person's
14 diagnosed mental disorder has so changed that he or she is not a
15 danger to the health and safety of others and is not likely to
16 engage in sexually violent criminal behavior if discharged, then
17 the court shall set a hearing on the issue.

18 (d) At the hearing, the committed person shall have the right to
19 be present and shall be entitled to the benefit of all constitutional
20 protections that were afforded to him or her at the initial
21 commitment proceeding. The attorney designated by the county
22 pursuant to subdivision (i) of Section 6601 shall represent the
23 state and shall have the right to demand a jury trial and to have
24 the committed person evaluated by experts chosen by the state.
25 The committed person also shall have the right to demand a jury
26 trial and to have experts evaluate him or her on his or her behalf.
27 The court shall appoint an expert if the person is indigent and
28 requests an appointment. The burden of proof at the hearing shall
29 be on the state to prove beyond a reasonable doubt that the
30 committed person's diagnosed mental disorder remains such that
31 he or she is a danger to the health and safety of others and is
32 likely to engage in sexually violent criminal behavior if
33 discharged *or returned to serve his or her remaining term of*
34 *parole, if any. The jury shall be instructed that the refusal or*
35 *failure to participate in the five-phase treatment program is*
36 *presumptive evidence that the person's diagnosed mental*
37 *disorder has not changed.*

38 (e) If the court or jury rules against the committed person at
39 the hearing conducted pursuant to subdivision (d), the term of
40 commitment of the person shall ~~run for a period of four years~~

1 ~~from the date of this ruling~~ *continue to run indeterminately*. If the
2 court or jury rules for the committed person, he or she shall be
3 unconditionally released and unconditionally discharged *or*
4 *returned to serve his or her remaining term of parole, if any*.

5 (f) In the event that the State Department of Mental Health has
6 reason to believe that a person committed to it as a sexually
7 violent predator is no longer a sexually violent predator, it shall
8 seek judicial review of the person's commitment pursuant to the
9 procedures set forth in Section 7250 in the superior court from
10 which the commitment was made. If the superior court
11 determines that the person is no longer a sexually violent
12 predator, he or she shall be unconditionally released and
13 unconditionally discharged *or returned to serve his or her*
14 *remaining term of parole, if any*.

15 SEC. 5. Section 6608 of the Welfare and Institutions Code is
16 amended to read:

17 6608. (a) Nothing in this article shall prohibit the person who
18 has been committed as a sexually violent predator from
19 petitioning the court for conditional release and subsequent
20 unconditional discharge without the recommendation or
21 concurrence of the Director of Mental Health. If a person has
22 previously filed a petition for conditional release without the
23 concurrence of the director and the court determined, either upon
24 review of the petition or following a hearing, that the petition
25 was frivolous or that the committed person's condition had not so
26 changed that he or she would not be a danger to others in that it is
27 not likely that he or she will engage in sexually violent criminal
28 behavior if placed under supervision and treatment in the
29 community, then the court shall deny the subsequent petition
30 unless it contains facts upon which a court could find that the
31 condition of the committed person had so changed that a hearing
32 was warranted. Upon receipt of a first or subsequent petition
33 from a committed person without the concurrence of the director,
34 the court shall endeavor whenever possible to review the petition
35 and determine if it is based upon frivolous grounds and, if so,
36 shall deny the petition without a hearing. The person petitioning
37 for conditional release and unconditional discharge under this
38 subdivision shall be entitled to assistance of counsel.

39 (b) The court shall give notice of the hearing date to the
40 attorney designated in subdivision (i) of Section 6601, the

1 retained or appointed attorney for the committed person, and the
2 Director of Mental Health at least 15 court days before the
3 hearing date.

4 (c) No hearing upon the petition shall be held until the person
5 who is committed has been under commitment for confinement
6 and care in a facility designated by the Director of Mental Health
7 for not less than one year from the date of the order of
8 commitment.

9 (d) The court shall hold a hearing to determine whether the
10 person committed would be a danger to the health and safety of
11 others in that it is likely that he or she will engage in sexually
12 violent criminal behavior due to his or her diagnosed mental
13 disorder if under supervision and treatment in the community. If
14 the court at the hearing determines that the committed person
15 would not be a danger to others due to his or her diagnosed
16 mental disorder while under supervision and treatment in the
17 community, the court shall order the committed person placed
18 with an appropriate forensic conditional release program
19 operated by the state for one year. A substantial portion of the
20 state-operated forensic conditional release program shall include
21 outpatient supervision and treatment. The court shall retain
22 jurisdiction of the person throughout the course of the program.
23 At the end of one year, the court shall hold a hearing to
24 determine if the person should be unconditionally released from
25 commitment on the basis that, by reason of a diagnosed mental
26 disorder, he or she is not a danger to the health and safety of
27 others in that it is not likely that he or she will engage in sexually
28 violent criminal behavior. The court shall not make this
29 determination until the person has completed at least one year in
30 the state-operated forensic conditional release program. The
31 court shall notify the Director of Mental Health of the hearing
32 date.

33 (e) Before placing a committed person in a state-operated
34 forensic conditional release program, the community program
35 director designated by the State Department of Mental Health
36 shall submit a written recommendation to the court stating which
37 forensic conditional release program is most appropriate for
38 supervising and treating the committed person. If the court does
39 not accept the community program director's recommendation,
40 the court shall specify the reason or reasons for its order on the

1 record. The procedures described in Sections 1605 to 1610,
2 inclusive, of the Penal Code shall apply to the person placed in
3 the forensic conditional release program.

4 (f) If the court determines that the person should be transferred
5 to a state-operated forensic conditional release program, the
6 community program director, or his or her designee, shall make
7 the necessary placement arrangements and, within 21 days after
8 receiving notice of the court's finding, the person shall be placed
9 in the community in accordance with the treatment and
10 supervision plan unless good cause for not doing so is presented
11 to the court.

12 (g) If the court rules against the committed person at the trial
13 for unconditional release from commitment, the court may place
14 the committed person on outpatient status in accordance with the
15 procedures described in Title 15 (commencing with Section
16 1600) of Part 2 of the Penal Code.

17 (h) If the court denies the petition to place the person in an
18 appropriate forensic conditional release program or if the petition
19 for unconditional discharge is denied, the person may not file a
20 new application until one year has elapsed from the date of the
21 denial.

22 (i) In any hearing authorized by this section, the petitioner
23 shall have the burden of proof by a preponderance of the
24 evidence.

25 (j) If the petition for conditional release is not made by the
26 director of the treatment facility to which the person is
27 committed, no action on the petition shall be taken by the court
28 without first obtaining the written recommendation of the
29 director of the treatment facility.

30 (k) Time spent in a conditional release program pursuant to
31 this section shall not count toward the term of commitment under
32 this article unless the person is confined in a locked facility by
33 the conditional release program, in which case the time spent in a
34 locked facility shall count toward the term of commitment.